

563110

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN MARINE SALVAGE, INC.,

Plaintiff,

vs.

MARK LEIPSITZ, *In Personam* and
a certain 40' Sea Ray Motor Yacht
"GOIN DOWNTOWN," Hull Identification
No. SERF4511A595, her engines, tackle,
machinery, appurtenances, etc., *In Rem*,

Defendants.

Case: 2:07-cv-14420
Assigned To: Steeh, George Caram
Referral Judge: Pepe, Steven D
Filed: 10-17-2007 At 04:23 PM
CMP MI MARINE SALVAGE V. LEIPSITZ E
T AL (DA)

D'LUGE, MILES, MILES & CAMERON
BRIAN J. MILES (P37186)
Counsel for Plaintiff
67 N. Walnut
Mount Clemens, MI 48043
(586) 468-7511; 468-7049-fax

VERIFIED COMPLAINT

Plaintiff, Michigan Marine Salvage, Inc. ("Michigan Marine"), for its Verified Complaint against Mark Leipsitz, *in personam*, and the Motor Yacht "GOIN DOWNTOWN," Hull Identification No. SERF4511A595, her engines, tackle, machinery, appurtenances, etc., *in rem*, alleges upon information and belief as follows:

1. This is a case within the Court's Admiralty and Maritime Jurisdiction within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 U.S.C. §1333.
2. Plaintiff, Michigan Marine Salvage, Inc. is a Michigan corporation with its principal place of business in Harrison Township, Michigan.

3. Defendant, Mark Leipsitz is the owner of a certain 40' Sea Ray motor yacht, "GOIN DOWNTOWN," Hull Identification No. SERF4511A595 (hereinafter referred to as the "Vessel") and is a resident of the County of Wayne, State of Michigan.

4. The Vessel is now, or will during the pendency of this action, be present within this district and within the jurisdiction of this Honorable Court.

5. On May 28, 2007 plaintiff was notified by Ecarte Marine that a 40' Sea Ray had run aground approximately 100 yards east of Canadian buoy X-40, was sitting in approximately one foot of water and was in need of assistance.

6. Two salvage vessels owned and operated by plaintiff were dispatched to assist in freeing the Vessel from its strand.

7. Upon arriving at the scene, authorization from Mark Leipsitz was given to proceed with the salvage efforts.

8. At approximately 10:00 p.m., the motor yacht "GOIN DOWNTOWN" broke free from its strand and was towed to deeper water. The Vessel was towed by plaintiff to Ecarte Marine for necessary repairs.

9. All actions undertaken by plaintiff in saving the Vessel were voluntarily undertaken without any legal obligation to do so.

10. The salvage services referenced above were requested and authorized by Mark Leipsitz as the owner of the Vessel.

11. As a result of plaintiff's efforts, the Vessel was successfully removed from the shoal and brought to safe harbor. The salvage operation was successful and resulted in no environmental damage or damage to the Vessel.

12. The foregoing actions of plaintiff constituted "pure salvage" within the meaning of the general maritime law and the Salvage Convention of 1989, thereby creating in plaintiff's favor a salvage lien against the Vessel, *in rem*, and a claim for salvage damages against Mark Leipsitz, *in personam*.

13. Plaintiff has made demand upon defendants for the sum of \$9,625.00 as compensation for its efforts described above, which request has been denied.

14. Upon information and belief, the defendant, Mark Leipsitz, has been fully reimbursed by Allstate Insurance Company, the insurer of the 40' Sea Ray "GOIN DOWNTOWN," who has approved the amount claimed by plaintiff and has issued a check to Mr. Leipsitz for the sum of \$9,625.00 fully reimbursing him for the salvage costs due and owing to plaintiff. Notwithstanding plaintiff's demand, defendant Leipsitz has failed and refused to pay plaintiff for the amount claimed.

15. Based upon the above and foregoing, plaintiff is entitled to judgment satisfying its claim for a salvage award against defendants, jointly and severally, in the amount of \$9,625.00.

WHEREFORE, plaintiff requests that this Honorable Court grant the following relief:

- A. That judgment be entered against defendants, jointly and severally, and in favor of plaintiff, in the amount of \$9,625.00, plus prejudgment interest, costs and attorney fees so wrongfully incurred;
- B. That process *in rem* pursuant to Rules C and E, Supplemental Rules for Admiralty and Maritime Claims, issue against the 40' Sea Ray, her engines, tackle, machinery, appurtenances, etc., and that all persons having or claiming any interest in said Vessel be cited to appear and answer under oath all and singular the above matters and that the Vessel be condemned and sold to pay the amounts due plaintiff; and

- C. That plaintiff has such further and equitable relief as this Honorable Court may deem just and proper under the circumstances.

Respectfully submitted,

D'LUGE, MILES, MILES & CAMERON P.L.C.


BRIAN J. MILES (P37186)
CHERYL A. CAMERON (P52497)

Attorneys for Plaintiff
bmiles@dmmpc.com
67 N. Walnut
Mt. Clemens, MI 48043
(586) 468-7511

Dated: October 3, 2007

VERIFICATION

I, Don Schmidt, being first duly sworn, depose and say that I am the _____ of Michigan Marine Salvage, Inc. plaintiff in the above entitled cause;

That I have read the foregoing Verified Complaint and know its contents;

That to the best of my knowledge, information and belief, the contents therefore are true;

MICHIGAN MARINE SALVAGE, INC.

By: _____

Subscribed and sworn to before me

this _____ day of _____, 2007

Notary Public

County, Michigan

My Commission Expires: _____

- C. That plaintiff has such further and equitable relief as this Honorable Court may deem just and proper under the circumstances.

Respectfully submitted,

D'LUGE, MILES, MILES & CAMERON P.L.C.

s/Brian J. Miles

BRIAN J. MILES (P37186)

CHERYL A. CAMERON (P52497)

Attorneys for Plaintiff

b miles@dmmplc.com

67 N. Walnut

Mt. Clemens, MI 48043

(586) 468-7511

Dated: October 3, 2007

VERIFICATION

I, Don Schmidt, being first duly sworn, depose and say that I am the Treasurer of Michigan Marine Salvage, Inc. plaintiff in the above entitled cause;

That I have read the foregoing Verified Complaint and know its contents;

That to the best of my knowledge, information and belief, the contents therefore are true;

MICHIGAN MARINE SALVAGE, INC.

By: Donald C. Schmidt

Donald Schmidt

10/8/07

Subscribed and sworn to before me

this 9th day of October, 2007

Charles A. Roth
Notary Public

Macomb, County, Michigan

My Commission Expires: 4-13-2012

CHARLES A. ROTH
NOTARY PUBLIC
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Apr 13, 2012
ACTING IN COUNTY OF Macomb

CIVIL COVER SHEET

County in which this action arose Canada

This civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Michigan Marine Salvage, Inc.

(b) County of Residence of First Listed Plaintiff Macomb

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Brian J. Miles (P37186), D'Luge, Miles, Miles & Cameron P.L.C., 67 N. Walnut Street, Mt. Clemens, MI 48043; (586) 468-7511

DEFENDANTS

Mark Leipsitz, In Personam and a certain 40' Sea Ray Motor Yacht "GOIN DOWNTOWN," Hull Identification No. SERF4511A595, her engines, tackle, appurtenances, etc., In Rem,

County of Residence of First Listed Defendant Wayne

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

At

Case: 2:07-cv-14420

Assigned To: Steeh, George Caram

Referral Judge: Pepe, Steven D

Filed: 10-17-2007 At 04:23 PM

CMP MI MARINE SALVAGE V. LEIPSITZ E T AL (DA)

II. BASIS OF JURISDICTION

(Select One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZ

(For F

Citizen of:

Citizen of Another State

☐ 2☐ 2 Incorporated and Principal Place of Business in Another State☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3☐ 3 Foreign Nation☐ 6 ☐ 6

IV. NATURE OF SUIT

(Select One Box Only)

CONTRACT

- ☐ 110 Insurance
☒ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY

- ☐ 210 Eminent Domain
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY

- ☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

CIVIL RIGHTS

- ☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 440 Other Civil Rights

PERSONAL INJURY

- ☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

PRISONER PETITIONS

- ☐ 510 Motions to Vacate Sentence
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS- Third Party 26 USC 7609

OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN

(Select One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Salvage

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND \$
\$9,625.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

October 3, 2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
